

**In Chamber**

1. **Case :- WRIT TAX No. - 619 of 2018**

**Petitioner :-** Rimjhim Ispat Limited  
**Respondent :-** State Of U.P. And 3 Others  
**Counsel for Petitioner :-** Ritvik Upadhya  
**Counsel for Respondent :-** C.S.C.

Connected with

2. **Case :- WRIT TAX No. - 618 of 2018**

**Petitioner :-** Juhi Alloys Limited  
**Respondent :-** State Of U.P. And 04 Others  
**Counsel for Petitioner :-** Ritvik Upadhya  
**Counsel for Respondent :-** C.S.C.

3. **Case :- WRIT TAX No. - 1528 of 2018**

**Petitioner :-** L.D. Goyal Steels Pvt. Ltd.  
**Respondent :-** State Of U.P. And 2 Others  
**Counsel for Petitioner :-** Shubham Agrawal  
**Counsel for Respondent :-** C.S.C.

**Hon'ble Pankaj Mithal,J.**  
**Hon'ble Pankaj Bhatia,J.**

**(Delivered by Hon'ble Pankaj Bhatia,J.)**

Since the controversy and facts involved in the aforesaid connected writ petitions are the same, therefore, they were heard together and are being decided by a common order with the consent of the parties.

We had heard Sri Vinod Kumar Upadhyay, Senior Counsel, assisted by Sri Ritvik Upadhyay in Writ Tax Nos. 619 of 2018 and 618 of 2018 and Sri Shubham Agrawal, learned counsel for the petitioner in Writ Tax Nos. 659 of 2018 & 1528 of 2018 and Sri C.B. Tripathi, learned counsel for the respondents.

For the sake of convenience, facts of Writ Tax No. 619 of 2018 are being adverted to.

The present petition has been filed by the petitioner challenging the entire search and seizure operation carried out by the respondent nos. 3 and 4 on 13<sup>th</sup> and 14<sup>th</sup> March, 2018 at the factory premises of the petitioner-company situate at Sumerpur, District Hamirpur, Uttar Pradesh as being illegal, arbitrary against the mandatory provisions of law and as a colourable and *mala fide* exercise of statutory powers.

During the pendency of the writ petition the petitioner challenged the confiscation order passed on 29.10.2018 under section 130(2) of the U.P. G.S.T. Act which was served upon the petitioner on 22.11.2018 by means of the amendment application and prayed for the following relief:

*(a) Issue a writ order or direction in the nature of certiorari calling for the records of the case and to quash the impugned Confiscation Order dated 29.10.2018 (Annexure-10 to this writ petition) passed by the respondent no. 4, the Deputy Commissioner, S.I. B. Range-A, Commercial Tax/UPGST, Kanpur, under section 130(2) of the Act.*

The facts leading to the filing of the present writ petition are as follows:

On 13.3.2018, at about 11.30 A.M., a search party, consisting of the Officers of U.P. GST/Commercial Tax Department, lead by respondent no. 3, started a search at the office premises of the petitioner-company situate at 123/360, Fazalganj, Kanpur and at the factory premises of the petitioner-company situate at B-22-23, Industrial Area, Bharua, Sumerpur, District Hamirpur. Simultaneously, the said search operations were monitored by respondent no. 3, who was present in the office of the petitioner-company at Fazalganj, Kanpur. It has further been alleged that the authorized signatory of the

petitioner-company Sri Sunil Gupta was not present at the time of search, however, he was called and was manhandled and pressurized to admit large scale tax evasion. It is alleged that he was asked to sign on some blank papers on 13.3.2018, which were used for drawing the Panchnama on 14.3.2018. The signature of Sri Sunil Gupta, on blank papers, was used by exercising duress, thus, the said Panchnama has no legal sanctity. It has been further stated that the stocks of the raw-materials as well as finished goods were not weighed by the respondent nos. 3 and 4 despite the insistence of Sri Sunil Gupta. The search party was informed that the raw-materials were duly covered by the tax invoices and E-way bills and they were fully reflected in the books of accounts. It is further alleged that in the factory premises the computerized weigh bridge is installed, however, the respondents did not weigh the raw-materials as well as the finished products and recorded highly exaggerated figures on the basis of assumptions in the Panchnama. It has been alleged that the list attached to the Panchnama is based on mere physical verification and eye estimation and the entries recorded therein are arbitrary. It has been further alleged that the two witnesses of the search, namely, Sri G.C. Sharma s/o Late Tarkesh Sharma, resident of 117/K/29, Sarvodaya Nagar, Kanpur and Sri Ankur Bhatt s/o Sri S.L. Bhatt, resident of 119/421, darshanpurva, Kanpur were brought by the search party from Kanpur as the addresses of the said witnesses recorded in the Panchnama itself shows. The said two persons are fake persons as they are not resident on the addresses mentioned in the Panchnama. The non-mentioning of the correct address itself clouds the entire exercise as arbitrary and *mala fide* as also an abuse of the process of law. It is further stated that even the list attached to the Panchnama clearly

shows that there is an overwriting while recording the stocks and it has also been argued that assuming for the sake of arguments to be correct, it was impossible for the respondent authorities to have weighed the goods referred to in the list attached to the Panchnama within such a short span of time.

Learned counsel for the petitioner has drawn our attention to the documents attached to the Panchnama to demonstrate that there are overwritings (page 51 internal page no. 10 of Annexure-1). It is further stated that a complaint was made by Sri Sunil Gupta on 15.3.2018 before the Commissioner U.P. GST, Lucknow along with his affidavit regarding the highhanded manner in which the search was carried out and further requested that the stocks may be re-verified under the supervision of the District Magistrate. A similar request was also made to the District Magistrate, Hamirpur on 14.3.2018. It is thus argued that the entire exercise of wrongly recording the goods in an arbitrary and *mala fide* manner was only to saddle the petitioner-company with heavy duty and penalty. The petitioner argued that Section 67 of the U.P.GST confers the power of inspection, search and seizure on the proper officer, who has 'reasons to believe' that a taxable person has suppressed any transaction relating to supply of goods and service or the person aggrieved has kept the goods at a place which has escaped the payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act. He has drawn our attention towards clause a and b of sub-section 1 and sub-section 2 of Section 67 of the U.P. GST Act 2017. It is also argued that the entire search and seizure was done in complete disregard to the mandatory provisions of sub-section 10 of Section 67 as also the provisions of Section 100 and Section 165 of the Cr.P.C. It has been argued at length that

"reasons to believe" are mandatory and a *sine qua non* before authority empowered under the Act, exercises its powers under Section 67 of the UPGST Act.

Mr. Upadhyay, learned Senior Counsel, has argued that all the returns were filed on a monthly basis along with the records of the goods of raw-materials and the finished products with the petitioner and there was no basis or material available with the respondent authorities to form a 'reason to believe' thus the powers have been exercised without there being any foundation or 'reasons to believe'. It is also argued that the 'reasons to believe' should be based upon tangible material and should not be based upon fanciful consideration as the exercise of powers of search and seizure is an exception to the fundamental right of the petitioner guaranteed under Article 19(1)(g) of the Constitution of India and this should be exercised strictly within the parameter prescribed for its exercises as any violation thereof would negate the rights of the petitioner guaranteed under Article 19 of the Constitution of India. The petitioner, thus, prays for the following reliefs:

*(i) issue a suitable writ, order or direction in the nature of certiorari calling for the records of the case and to quash the impugned Seizure Order and Panchnama dated 14.3.2018 (Annexure-1 to this writ petition).*

*(ii) issue a suitable writ, order or direction in the nature of mandamus restraining the respondents from taking any action on the basis of the impugned Seizure Order and Panchnama dated 14.3.2018 (Annexure-1 to this writ petition.)*

*(iii) issue a suitable writ, order or direction in the nature of mandamus commanding the respondents to release/return all the documents and goods seized vide the impugned Seizure Order and Panchnama dated 14.3.2018.*

*(iv) issue a suitable writ order or direction in the nature of mandamus directing the respondents, to return back the sale and purchase invoices which are yet to be incorporated in the stock register, seized during the course of search, to find out actual figure of purchases*

*and sales.*

*(v) issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in facts of the instant case.*

And for prayer made through amendment application.

*(a) Issue a writ order or direction in the nature of certiorari calling for the records of the case and to quash the impugned Confiscation Order dated 29.10.2018 (Annexure-10 to this writ petition) passed by the respondent no. 4, the Deputy Commissioner, S.I. B. Range-A, Commercial Tax/UPGST, Kanpur, under section 130(2) of the Act.*

Learned counsel for the respondents, on the other hand, has filed counter affidavit denying the allegations made in the writ petition. The counter affidavit filed by respondent no. 3 and sworn by one Bhanu Prakash Mishra states that the petitioner provided steel billets to its sister concerned namely M/s. Juhi Alloys Limited and M/s. Rimjhim Stainless Steel Limited for manufacturing of S.S. Patra and S.S. Wire Rod and after getting job work some goods are sold from premises of the factory and some goods are received back by the petitioner. It is further stated that at the time of scrutiny of the monthly returns for the month of June 2017, it was found that the petitioner has sold raw materials to M/s. Juhi Alloys Limited worth Rs. 55.10 crores from 267 bills and from 166 bills a sale of Rs. 29.63 crores was done to another sister concern namely M/s. Rimjhim Stainless Steel Limited. It is further stated that there is another sister concern of the petitioner namely M/s. Vandana Steel Private Limited and that Juhi Alloys Limited and M/s. Rimjhim Stainless Steel Limited has sold all the raw-materials to M/s. Vandana Steel Private Limited in the month of June itself. M/s Vandana Steel Private Limited in the month of June 2007, has again shown the sale of some goods valued at Rs. 6.49 crores and in the month of July, 2017 a sale of Rs. 41.40 crores to the petitioner. It has been further stated that three sisters concern and the petitioner are working in

the same premises and they have used invoices of different series which is against the provision of section 22 of the U.P. Value Added Tax Act 2008 read with Rule 44(10) of the U.P. Value Added Tax Rules as well as under the provisions of UPGST Act. The Department found that the said transactions was doubtful and, thus, the premises of the petitioner were inspected together. It has been further stated that the information was received by the Department that M/s. Rimjhim Stainless Steel Limited is involved in tax evasion and hence a proper watch was being kept on the transaction of M/s. Rimjhim Stainless Steel Limited and a confidential report was was obtained wherein it was found that the petitioner is involved in tax evasion. It is further stated that Mobile Squad Unit-7, Commercial Tax, Kanpur checked the truck of the petitioner carrying the goods on 11.3.2018 at about 1.00 P.M. wherein the E-way bill was found to be suspicious making it clear that the same goods are being sold and transported again. As regards irregularities during search, it is stated that the inspection was carried out continuously for 30 hours and the stock of the goods upto 14.3.2018 and goods as disclosed in the stock register were inspected. It is further stated that the search was conducted in accordance with the provisions of Section 67 of the U.P. GST Act and were conducted under the supervision of respondent no. 3. The respondents emphatically denied that the signature of Sri Sunil Gupta were obtained on blank papers and further states that no report in this regard has been given to the police authorities. As regards the overwriting it has been stated that the entries were recorded by mistake and were thus corrected and the corrected sheet was also signed by nominated persons of the petitioner. As regards the witnesses it is stated that the factory premises of the petitioner is situated at industrial area and in the near about vicinity, there is no

residential area and the witnesses were present and were ready to sign as witness and their addresses were mentioned by the said witnesses and it was not possible to verify their addresses at that point of time. However, to establish the genuineness of those persons a copy of I.D. proof was received. It has been further denied that the weighment was not done properly and, in fact, the said weighment sheets were duly signed by authorized representative of the petitioner-company, who has never questioned the same till today.

In respect to the said counter affidavit, filed on behalf of the respondent no. 3, the petitioner has filed a rejoinder affidavit denying the averments made in the counter affidavit. It has been clarified that the U.P.GST Act 2017 was enforced in the State of Uttar Pradesh with effect from 01.7.2017 and till 30.6.2017 the petitioner was using two series of tax invoices, one series of tax being in relation to the goods manufactured on which excise duty was payable under the Central Excise Act and the other series of tax invoices was in relation to trading activity carried out by the petitioner. It has also been stated that two series of tax invoices were used during the period prior of enforcement of U.P. GST Act and in the returns filed these facts were well disclosed and were never objected to by the respondents. It is also stated that this practice of maintaining two sets of invoices, one for manufacture goods and one for drawing goods was the accepted norm prior to U.P. GST Act coming into force. It is further stated that there is no material in the counter affidavit to justify the allegations that the department has 'reasons to believe' that the petitioner was indulging in large scale taxes evasion which led to the exercise of powers under Section 67 of U.P. GST Act and, thus, the 'reasons to believe' even if any were based upon no material. As regards the allegations in the counter affidavit pertaining to the goods

intercepted on 11.3.2018. It is stated that the same was subject matter of Writ Tax No. 559 of 2018, which was allowed by this Court vide its judgement and order dated 18.9.2018 and all the stands taken by the Department, pursuant to the interception to the said goods, were set aside. The petitioner has also stated that the entire exercise of physical verification of the goods is to find out the correct goods quantum of goods, finished, semi finished and raw-material laying in the premises and to tally the same with the entries maintained in the books of accounts and that no actual weighing on actual goods was done. The entire exercise is wholly arbitrary and illegal.

A counter affidavit has also been filed on behalf of the respondent no. 4 which is similar to the counter affidavit filed on behalf of the respondent no. 3. The petitioner has also filed a rejoinder affidavit to the said counter affidavit denying the averments made.

The petitioner has filed written submissions in support of the arguments wherein it has been argued that the challenge to the entire search and seizure operation is primarily on two grounds:

*(a) the competent authority could not have reason to believe that the circumstances enumerated in Clauses (a) and (b) of sub-section (1) and of sub-section (2) of section 67 of the UPGST Act, 2017 (hereinafter referred to as the Act) existed to authorized search and seizure at the factory of the petitioner company, and*

*(b) the procedure adopted for search and seizure and the surrounding and attendant indisputable facts and circumstances on record demonstrate that entire exercise of search and seizure as also consequential confiscation of goods was a malafide/colourable exercise of power.*

In support of the arguments regarding non-existence the 'reasons to believe' the petitioner has relied upon the judgement of Hon'ble Supreme Court in the case of **Kranti Associates Pvt.**

**Ltd. vs. Masood Ahmad Khan, 2011 (273) E.L.T. 345** wherein the Supreme Court while considering the nature and manner of exercise of powers by the National Consumer Disputes Redressal Commission recorded as under:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- b. A quasi-judicial authority must record reasons in support of its conclusions.*
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- g. Reasons facilitate the process of judicial review by superior Courts.*

The said judgement relates to recording all reasons for exercise of administrative decisions and judicial decisions and the Hon'ble Supreme Court has held that recording all reasons while exercising judicial, quasi-judicial or even administrative powers are indispensable component of decision making process, however, the power exercises in the present case is not a part of the decision making process, thus, the said judgement has no applicability because of the present case. The petitioner has also placed reliance in the case of **Dharampal Satyapal vs. CCE, 2015 (320) E.L.T. 3** wherein the Supreme Court has extensively dealt with the principles of natural justice to be followed while taking any decision. The said decision, we are afraid, has no applicability to the facts of the present case inasmuch as no decisions has been taken and in

authorization for search of recording reasons cannot be equated with a decision or quasi-judicial decision or even on an administrative decision and thus the principles of natural justice applicable to the process of decision making cannot be applied to the present case. It has been further argued that 'reasons to believe' as mentioned in section 67 of the UPGST Act should be exercised only when the circumstances enumerated therein exists and the powers must be exercised on the information and should be founded on reason. The petitioner has extensively relied upon analogous provisions for search and seizure as contained in section 132 of the Income Tax Act and have argued that to interpret the phrase '*reason to believe*' the Hon'ble Supreme Court in the case of **ITO vs. Seth Bros, (1969) 2 SCC 324** has recorded as under:

*“the section does not confer any arbitrary authority upon the Revenue Officers. The Commissioner or the Director of Inspection must have, in consequence of information, reason to believe that the conditions for the exercise of the power to order search exist. He must record reasons for the belief.”*

Similar view of the Hon'ble Supreme Court has been followed by the Hon'ble Supreme Court in the case of **Director General of Income Tax (Investigation), Pune and Ors. vs. Spacewood Furnishers Private Limited, (2015) 12 SCC 179=(2015) 374 ITR 595** wherein the Supreme Court has summarized the applicable principles as under:

**8.2** *Such information must be in possession of the authorized official before the opinion is formed.*

**8.3.** *There must be application of mind to the material and the formation of opinion must be honest and bonafide. Consideration of any extraneous or irrelevant material will vitiate the belief/satisfaction.*

**8.4** *Though Rule 112(2) of the Income Tax Rules which specifically prescribed the necessity of recording of reasons before issuing a warrant of authorization had been repealed on and from 1st October, 1975 the reasons for the belief found should be recorded.*

**8.5**.....

**8.6** *Such reasons, however, may have to be placed before the Court in the event of a challenge to formation of the belief of the authorized official in which event the court (exercising jurisdiction under Article 226) would be entitled to examine the relevance of the reasons for the formation of the belief though not the sufficiency or adequacy thereof.*

During the course of hearing learned Standing Counsel for the Department had placed before this Court certain documents relating to the authorization for inspection of search in terms of Rule 139(1) of the U.P.GST Rules to impress the Court that based upon the materials, 'reasons to believe' were recorded.

The Court has perused the said 'reasons to believe', however, para 6 and 7 of the counter affidavit, which recorded the reasons for carried out the search and seizure, are not mentioned in the 'reasons to believe' as brought before this Court.

Learned counsel for the petitioner has heavily relied upon para 6 and 7 of the counter affidavit to demonstrate that the said averments cannot be equated with 'reasons to believe', however, the petitioner has fairly stated that some documents were shown during the course of the argument of which petitioner is not aware, as the same was not shown to the counsel for the petitioner. However, on the basis of the averments recorded in para 6, 7 & 8 of the counter affidavit, the learned counsel for the petitioner states that there are no reasons empowering the respondents to exercise huge power of search and seizure.

In support of the other argument that the procedure adopted for the search and seizure was a *malafide*/colourable exercise of power. Learned counsel for the petitioner has argued that a series of facts may reasonably lead to the inevitable inference that the the action was a result of colourable exercise of power as direct evidence to demonstrate the colourable

exercise of power is seldom available while placing reliance of the judgement of the Supreme Court in the case of **Uddar Gagan Properties Ltd. vs. Sant Singh & Ors., (2016) 11 SCC 378 para 23 and 28 and Delhi Development Authority & Anr. vs. UEE Electricals Engg. (P) Ltd. & Anr., (2004) 11 SCC 213 para 16.**

Learned counsel for the petitioners has reiterated that blank documents were got signed which the petitioners submits is wholly wrong and, in fact, the petitioner had complained such of such factors of getting blank paper signed before the District Magistrate and the Department. The counsel for the petitioner vehemently argued that the search witnesses were brought from Kanpur by the search team and the averment made in para 22 of the counter affidavit that the factory is situate in an industrial area and there are no residential area in the vicinity and the witnesses were present by chance and agreed to be a witness, is wholly false, inasmuch as, in para 18 of the counter affidavit itself it has been recorded that in the company premises a large number of employees and officers are posted and their residential flats are situated in the company premises. The petitioner has hammered on the fact that the chance witnesses are resident of Kanpur yet they were conveniently available and agreed to become witness to the search. The petitioner also highlighted the facts that in para 21 of the rejoinder affidavit the petitioner has brought on record the facts which belie the statements of the respondents to demonstrate that the chance witnesses were private off-roll employees employed by the Officers of the SIB Commercial Tax/GST, Kanpur and had been working with the SIB Officers for the last ten years. It is stated that this fact clearly demonstrates that the procedure for search was not in accordance with the provisions of sub-section 4 of section 100 of the Cr.P.C.

The petitioner has reiterated in the written arguments that fair procedures were not adopted in preparation of the list attached to the Panchnama despite the weighing scale available in the factory premises itself. The petitioner has also relied upon two judgements of Hon'ble Supreme Court in case of **CIT vs. Utkal Alloys Ltd. (2009) 319 ITR 339 (Ori.)**, para 10, 12 and 13 and in case of **Tata Chemicals Ltd. vs. Commissioner of Customs, (2015) 320 E.L.T. 45 (SC)**, para 15, 16 and 17 and a judgement of Delhi High Court in the case of **CIT vs. Balaji Wire P. Ltd., (2008) 304 ITR 393 (Del)** para 16 to 20.

In view of submissions made by the petitioner and the respondents points that emerge for adjudication are whether the search and seizure was carried out by observing the 'substantive due process' as well as the 'procedural due process.'

As regards the substantive due process, which has to be followed before any search, can be carried out, is contained under sections 67(1) and 67(2) of the U.P. GST Act and prior to exercise of the said powers, it is essential that the officer authorizing the search should have 'reasons to believe.' The principles that are culled out from the catena of decisions referred above is that the 'reasons to believe' should exist and should be based on reasonable material and should not be fanciful or arbitrary. It is also established that this Court in exercise of its powers under Article 226 cannot go into the sufficiency of the reasons and should not sit as an appellate court over the reasons recorded. It is also well established that the reasons may or may not be communicated to the assessee but the same should exist on record.

Sri C.B. Tripathi, learned counsel for the respondent, during the course of arguments, had placed before us the part of the records wherein the officers concerned had recorded their

'reasons to believe' prior to authorizing the search, the 'reasons to believe' were based upon information received by the Department fortified by interception of the goods of the petitioner on 11.3.2018 wherein the e-way bill was found to be suspicious and it is based upon this perception a reason to believe was formed by the Department which led to the search on 13.3.2018.

The arguments raised by Sri Vinod Kumar Upadhya, Senior Counsel for the petitioner that the seizure of the truck on 11.3.2018 was set aside by this Court in Writ Tax No. 559 of 2018 vide its judgement and order dated 18.9.2018 is no doubt correct but however the judgement of this Court was given on 18.9.2018 and as on 13.3.2018, the Department had valid materials/reasons to authorize and to conduct search and seizure, the question regarding the sufficiency of material, as held by the Hon'ble Supreme Court cannot be gone into by this Court in exercise of its power under Article 226 and, thus, we are inclined to hold that the Department had 'reasons to believe' and, in pursuance of the said reasons, the search and seizure operations were carried as such the writ petition fails as regards in sufficiency of material for carrying out the search and seizure.

Now advertng to the submissions made with regard to non-observance of procedures prescribed during the search and seizure, the two questions raised in the present petition highlighting the non-following the procedures relate to not carrying out the actual weighment of goods, the preparation of inventory basis of eye estimation as well as the chance witnesses not being independent, we are of the view that the chance witnesses or the witnesses to the search in the present case cannot be termed as interested witnesses as the Hon'ble Supreme Court has held that while questioning the independence of the witnesses it has to be categorically established that the

witnesses were dependent or their livelihood on the investigating agency, which fact although pleaded, has not been established by any cogent evidence. As regards the overwriting in the weighment sheets prepared by the Department, we are persuaded to accept the version of the respondent authorities that the overridings were done at the time of weighment due to recordings made by mistake which were corrected and the corrected sheets were got signed by the petitioner. The petitioner has thus failed to even establish that the procedure followed during the search was illegal or tainted with *mala fides*. Thus, in view of the findings recorded above, the writ petition fails and is liable to be dismissed.

Now coming to the question of the validity of the confiscation order passed under Section 130 of the UPGST Act and challenged by the petitioner by means of an amendment application filed. The perusal of the said confiscation order (Annexure-10 to the writ petition) reveals that the said order has been passed *ex parte*, it is observed in the said order that notices were sent to the petitioner, however, initially the petitioner took a stand that the matter is pending with regard to the validity of the search and seizure before the High Court and prayed that the adjudication on the question of confiscation be adjourned till the decision is rendered by the High Court, however, respondent authorities held that despite opportunities being granted no defence has been filed to the proposed confiscation and, secondly, that there was no stay order passed by the High Court and thus on these two basis proceeded to pass the order of confiscation. Section 130 of the Act confers the power to confiscate the goods, however, Section 130(4) clearly provides that opportunity of hearing shall be granted prior to passing the order on confiscation. In the present case, the petitioner had

informed the authorities concerned to defer the adjudication on confiscation because the issue of validity of the search was engaging the attention of the High Court, we are of the view that despite the fact that there was no stay order restraining the respondents from passing the confiscation order but in all fairness as the hearing was going on at the High Court, the respondent authorities should have awaited the outcome of the challenge made to the search by the petitioner.

Considering the view that we have now rejected the challenge by the petitioner to the search, we are inclined to quash the order dated 29.10.2018, passed by respondent no. 4, Assistant Commissioner, (SIB) Region-B, Commercial Tax(GST), Kanpur and remand the matter before the said authority to adjudicate on the question of confiscation afresh, after giving an opportunity of hearing to the petitioner, in terms of the mandate cast by virtue of Section 130(4) of the UPGST Act, 2017, in accordance with law.

For the similar reasons, as recorded hereinabove, we quash the order dated 22.11.2018 passed by the respondent no. 3 and under challenge in Writ Tax No. 618 of 2018.

With regard to Writ Tax No. 1528 of 2018, Sri Shubham Agrawal, learned counsel for the petitioner, adopted the argument of Sri V.K. Upadhyay, Senior Counsel, and in this case, the respondents have placed before this Court the reasons to believe as recorded in their file on 26.10.2018. The said reasons, on perusal, do not appear to be fanciful or arbitrary and as held hereinabove that the Court cannot go into the question of validity of the reasons as an Appellate Court and for the similar reasons as recorded hereinabove, the Writ Tax No. 1528 of 2018 fails and is dismissed. Since there is no challenge or order on record confiscating the goods, the said question has not been

considered.

With regard to Writ Tax No. 659 of 2018 (M/s Shri Balaji Concast (Unit-I) Private Ltd. vs. State of U.P. And 2 others), this case was heard along with Writ Tax Nos. 619 of 2018, 618 of 2018 & 1528 of 2018. However, the reasons to believe as recorded by the respondents were not produced by the learned Standing Counsel and for this reason the Writ Tax No. 659 of 2018 is not being decided alongwith connected cases.

The writ petitions bearing Writ Tax Nos. 619 of 2018 and 618 of 2018 are disposed off in terms of the above referred orders.

**Order Date** :- 15.3.2019  
Puspendra